AFR

(29)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

Misc. Appeal (C) No. 285 of 2006

Appellant/
Owner of the vehicle

Kuleshwar @ Raju, S/o Shri Lalaram Sahu, Owner of Vehicle, Tractor No.CG-05-B-6192 along with Trolley No.CG-05-B-6193, R/o Village Nawagaon, Thana Magarlod, Tehsil & District Dhamtari (CG).

Non-Applicant No.2

Versus

Respondents/
Claimants

1. Firanta Sahu, S/o Kariya Sahu, aged about 70 years.
2. Smt. Radhiya Bai Sahu, W/o Firanta Sahu, aged about 65 years.
3. Smt. Budhiyarin Bai, Wd/o Kalyan Sahu, aged about 25 years.
4. Hemnarayan, S/o Kalyan Sahu, aged about 6 years.
5. Bhagirathi, S/o Late Kalyan Sahu, aged about 3 years.

No. 4 to 5 minor sons of Kalyan Sahu, through mother Smt. Budhyarin Bai Sahu, Wd/o Kalyan Sahu.

All Agriculturist, All R/o Village Lafandi, Tehsil Rajim, District Raipur (CG).

Claimants

Respondent/
Driver of the vehicle

6. Cheman Lal, S/o Harkhuram Tarak, aged about 30 years, Driver, Tractor No.CG-05-B-6192 along with Trolley No.CG-05-B-6193), R/o Village Lafandi, Tehsil Rajim, District Raipur (CG).

Non-applicant No.1

(25)

Respondent/ Insurer of the vehicle	7.	The New India Insurance Company Limited, Vikas Pradhikaran Bhawan, Bajrang Market, Raipur, Tehsil & District Raipur (CG).
		Non-applicant No.3

Present :- Shri Sumesh Bajaj, counsel for the appellant.
None for the respondents.

Misc. Appeal (C) No. 102 of 2007

Appellants Claimants	1.	Firanta Sahu, S/o Late Kariya Sahu, aged about 70 years.
	2.	Smt. Radhiya Bai Sahu, W/o Firanta Sahu, aged about 65 years.
	3.	Smt. Budhiyarin Bai Sahu, W/o Late Kalyan Sahu, aged about 25 years.
	4.	Hemnarayan Sahu, S/o Late Kalyan Sahu, aged about 6 years.
	5.	Bhagirathi Sahu, S/o Late Kalyan Sahu, aged about 3 years.
		[Appellant No.4 & 5 minor on through their legal guardian mother appellant No.3 Smt. Budhiyarin Bai Sahu]
		Occupation – All Agriculturist, All R/o Village Lafandi, Tehsil Rajim, District Raipur (CG).
		Versus
Respondents Non-Claimants	1.	Cheman Lal Tarak, S/o Harkhuram Tarak, aged about 30 years, Occupation – Driver (Vehicle Tractor bearing registration No.CG-05-B-6192 with Trolley No.CG-05-B-6193), R/o Village Lafandi, Tehsil Rajim, District Raipur (CG).

(26)

2. Kuleshwar Sahu @ Raju, S/o Lalaram Sahu, Owner - (Vehicle Tractor bearing registration No.CG-05-B-6192 with Trolley No.CG-05-B-6193), R/o Village Nawagaon, Police Station Magarlod, Tehsil Dhamtari, District Dhamtari (CG).

3. The New India Insurance Company Limited, through Divisional Manager, Development Authority Bhawan, Bajrang Market, Raipur, Tehsil & District Raipur (CG).

Present :- Shri Shivendu Pandya, counsel for the appellants.
None for the respondents.

ORAL ORDER
(Passed on 2nd April, 2007)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

Both the appeals have been arising out of common award; therefore, both of them are taken together for hearing and disposal.

2) First Additional Motor Accident Claims Tribunal, Raipur, Link Court at Gariyaband (for short "the Tribunal"), vide award dated 17-7-2006 passed in claim case No.42/2006 allowed compensation of Rs.2,26,000/- in favour of claimants against non-claimants No.1 and 2, who are driver and owner of the vehicle. Feeling aggrieved claimants have filed appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act, 1988") for enhancement of the compensation and also questioning the exoneration of Insurance Company from payment of compensation amount. Owner of the vehicle/non-claimant No.2 also preferred an appeal questioning the quantum of compensation and exoneration of Insurance Company/non-claimant No.3 from reimbursement of the compensation amount.

(27)

3) Briefly stated facts are that on 9-9-2005 Kalyan Sahu (since deceased) alongwith other labourers after loading *murum* in tractor bearing registration No.CG-05-B-6192 & Trolley bearing registration No.CG-05-B-6193 (for short "the offending vehicle") were going to Samhartara sitting on the trolley. Non-applicant No.1 was the driver of the offending vehicle. As a result of rash and negligent driving of non-applicant No.1, the tractor turned turtle. Kalyan Sahu fell down and came beneath the tractor's engine and succumbed to those on the spot. The claimants, who are legal representatives of the deceased, filed an application under Section 166 of the Act, 1988 for compensation against non-claimants No.1 to 3, who are driver, owner and insurer of the offending vehicle.

4) Non-claimants No.1 & 2, the driver and owner of the offending vehicle, contested the claim, however, the driver of the vehicle did not dispute that engine of the tractor turned turtle. Non-claimant No.3/Insurer contested the claim and very specifically took a defence that he is bound to reimburse the claim in accordance with law, rules and condition of the policy, in case of breach of any condition of the policy the company is not responsible for payment of compensation.

5) Both the parties in support of their case adduced oral and documentary evidence. The Tribunal after appreciating the evidence exonerated the Insurance Company holding that at the time of accident the tractor and trolley were used in violation of the policy of the insurance and allowed compensation in favour of claimants against the non-claimants No.1 and 2, who are driver and owner of the vehicle. Compensation allowed is as below :

(28)

S.No.	Head	Amount
01.	Loss of Dependency	2,04,000=00
02.	Funeral expenses	3,000=00
03.	Consortium	5,000=00
04.	Love & Affection	14,000=00
	T O T A L	**2,26,000=00**

6) Learned counsel for the claimants, during the course of arguments, did not question the amount of compensation and said that the compensation awarded is just and proper. His grievance is that non-claimants No.1 and 2 did not deposit the compensation amount so far. Learned counsel for the owner of the offending vehicle contended that the Insurance Company did not plea the breach of policy in accordance with Order VI Rule 4 of the Code of Civil Procedure (for short "the Code"), therefore, he was deprived to meet the defence taken by the Insurance Company during the evidence stage. The compensation awarded by the Tribunal is also on higher side.

7) We have gone through the record of the Tribunal. Perused the award, documentary and oral evidence. From the evidence of Firanta Sahu (AW-1) and Leeladhar (AW-2), it was proved that deceased Kalyan Sahu was a labourer. Although it was not proved that deceased was getting the work daily, therefore, the Tribunal allowed his income as Rs.1,500/- per month and after reducing 1/3rd as his own expenses, assessed dependency Rs.1,000/- per month and by applying the multiplier method recorded dependency of Rs.2,04,000/-. From the evidence on record, the finding of fact recorded by the Tribunal does not appear to be condemnable. The Tribunal allowed just and proper amount towards other heads. So far as compensation allowed by the Tribunal is concerned, claimants themselves does not challenge it during the course of arguments as unjust or improper and

(29)

the challenge made by the owner does not appear to be acceptable in view of the aforesaid discussions.

8) Section 169 of the Act, 1988 prescribes summary procedure for enquiry of claims. Rules framed by the State for enquiry of claims by Claims Tribunal although made applicable several provisions of the Code, but all the provisions of the Code have not been made applicable to be followed by the Claims Tribunal. Order VI of the Code also falls within those provisions, which are not made applicable to Claims Tribunal. Order VI Rule 4 of the Code reads as below :

> "**4. Particulars to be given where necessary.**—In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

From bare reading of the above provisions, it is evident that this is not a case of misrepresentation, fraud, breach of trust, wilful default, or undue influence, but Insurance Company very specifically took a defence that in case breach of condition of policy, the company shall not be liable to pay the compensation amount. Pleading is there and only burden lies on the shoulder of Insurance Company is to prove its pleading. It is not necessary that Insurance Company should prove its plea by introducing its own witnesses and it can prove its contention by evidence brought before the Tribunal by other parties also.

9) Here in the instant case, Firanta Sahu (AW-1) in his statement stated that deceased was engaged in transportation of *murum*, therefore, on the date of incident he was in the tractor trolley, which

(30)

was carrying *murum* from Chaitra to Samhartara. He further deposed that the *murum* was transported for construction of road. Leeladhar (AW-2) in his statement deposed that road construction at Samhartara was going on. For the said purpose *murum* was being transported and they were doing the work of labourer in transportation of *murum* and the tractor was transporting the *murum* to Samhartara where road was constructed. Even owner of the offending vehicle Kuleshwar Sahu (NAW-1) in his statement deposed that on the date of incident his vehicle was used for transporting *murum*. Undisputedly the truck and trolley was insured for agricultural purpose. From the oral evidence as stated above, it was established that the truck and trolley was being used for transporting the *murum* for construction of road. It is as clear as crystal that the truck and trolley was used for commercial purpose and in violation of the condition of the insurance policy, therefore, the Tribunal while exonerating the Insurance Company did not commit any error or illegality, which may call for interference of this Court.

10) In view of the above, we are of the considered opinion that the finding recorded by the Tribunal against non-claimants No.1 and 2 are finding of facts and are recorded on the strength of legal admissible evidence and those findings in no way can be condemned. No interference of this Court is called for in the finding and award passed by the Tribunal, which does not suffer from any illegality or infirmity.

11) In the result, both the appeals are liable to be dismissed and are accordingly dismissed. No costs.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Chief Justice